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Altered Standards of Care: An Overview

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Overview

- ❖ VHHA engaged Troutman Sanders on issues related to emergency and disaster preparedness
- ❖ Addressing issues re: Altered Standards of Care is a priority
- ❖ Work Group was organized to identify key components of, and evaluate the most appropriate strategies to address concerns regarding, altered standards of care
 - ◆ Non-legislative
 - ◆ Legislative

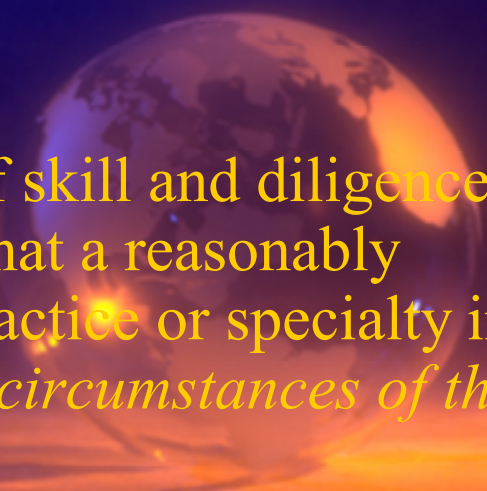
What is the standard of care in Virginia?

❖ Statutory Definition

- ◆ A practitioner must use “[T]hat degree of skill and diligence practiced by a reasonably prudent practitioner in the field or specialty in this Commonwealth.” (Virginia Code § 8.01-581.20)

❖ Jury Instructions

- ◆ A practitioner must use “the degree of skill and diligence in the care and treatment of his patient that a reasonably prudent doctor in the same field of practice or specialty in this State would have used *under the circumstances of this case.*” (Civil Instruction No. 35.000)



What is an “altered” standard of care?

- ❖ No accepted definition
- ❖ Hospitals and health care practitioners will probably not be able to render the customary level of care during an emergency/disaster situation
- ❖ Components of AHRQ definition:
 - ◆ Allocation of scarce resources
 - ◆ Greatest good for the greatest number
- ❖ DHS: fair distribution to achieve the greatest benefit
- ❖ JCAHO: graceful degradation



Potential Examples



Hospital Bed Ventilator

- ❖ Ventilators
- ❖ Anti-virals
- ❖ Blood products
- ❖ Operating Rooms
- ❖ Housing patients

Application of Current VA Law

- ❖ There is no case law dealing with altered standards of care
- ❖ Discrepancy between jury instructions and statute
 - ◆ Qualifying clause in jury instructions requires jury to account for unique circumstances
 - ◆ These unique circumstances will be important to consider in altered standard of care cases
 - ◆ How individual courts will apply in specific cases is not clear

Preliminary Conclusions

- ❖ Because a jury will be instructed to consider circumstances, documentation of emergency or disaster circumstances is crucial
- ❖ “Altered standards of care” is misleading
- ❖ Focus on allocation of scarce critical resources
- ❖ Hospitals need a process that they can use to determine how and when to allocate scarce resources

CRITICAL RESOURCE SHORTAGE PLANNING GUIDE



Definitions

- ❖ **Critical Resource:** those resources that are necessary to sustain human life, prevent permanent injury/disability, or stabilize a patient experiencing a medical emergency.
- ❖ **Critical Resource Shortage:** Critical Resource has been depleted, and all alternate methods of obtaining the Critical Resource have been exhausted, such that remaining resources will not allow a hospital to treat patients in accordance with the traditional standard of care.

Definitions

- ❖ **Critical Resource Shortage Response Plan:** that treatment protocol that is created in response to a critical resource shortage that is caused by an emergency or disaster, as defined in Title 44, pursuant to which scarce critical resources are allocated to do the most good for the greatest number of patients.
- ❖ **Emergency or Disaster:** those community and statewide emergencies and disasters that are encompassed in the definition in Title 44 of the Virginia Code.

Planning Guide Framework

❖ Pre-Event

- ◆ Establish critical resource planning committee
- ◆ Conduct critical resource vulnerability analysis
- ◆ Develop critical resource response plans and triage protocols
- ◆ Educate staff
- ◆ Exercise/drill



Planning Guide Framework

❖ During the Event

- ◆ Activate existing critical resource response plans
- ◆ Develop ad hoc critical resource response plans, if needed
- ◆ Terminate critical resource response plans

❖ Post-Event

- ◆ Evaluate critical resource response plans
- ◆ Modify plans as needed

